IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. [redacted] 5

ELECTRIC POWER & LIGHT CORPORATION,
Petitioner,

against

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Electric Power & Light Corporation (herein sometimes called "Electric") prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the First Circuit to review the decree of that court affirming an order of the Securities and Exchange Commission (herein called the "Commission"). The decree of the Circuit Court of Appeals was entered on March 17, 1944 (R., Vol. IV, pp. 900-901). A petition for rehearing was denied on April 18, 1944 (R., Vol. IV, p. 901).

This petition is based on the same record as the petition of American Power & Light Company (herein called "American") this day filed in this Court to review a like

decree of the Circuit Court of Appeals filed on the same day pursuant to the same decision, the cases having been consolidated for argument and decision in that court.

Opinions Below.

This cause originated by proceeding instituted by the Commission on May 10, 1940, under Section 11(b)(2) of the Public Utility Holding Company Act of 1935, against Electric Bond and Share Company (herein called "Bond and Share") and certain of its subsidiaries including petitioner and American (R., Vol. I, pp. 27-54). After hearings, the Commission on August 22, 1942, issued its findings and opinion (R., Vol. II, pp. 523-649) and order (R., Vol. II, pp. 652-655) directing that the petitioner be dissolved and that it and Bond and Share submit a plan or plans to the Commission for the effectuation of the order. On August 28, 1942, a rehearing was denied (R., Vol. II, pp. 679-680). The opinion of the Commission has thus far been published by it only as SEC Holding Company Act Release No. 3750.

The affirming opinion of the Circuit Court of Appeals (R., Vol. IV, pp. 868-899) is reported *sub nom. American Power & Light Co.* v. *Securities and Exchange Commission*, 141 F. (2d) 606.

Jurisdictional Statement.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code (Act of February 13, 1925, 43 Stat. 938, U. S. C., Title 28, Section 347(a)), made applicable by Section 24(a) of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 834-5, U. S. C., Title 15, Section 79x(a)).

Statute Involved.

The statute involved is the Public Utility Holding Company Act of 1935 (49 Stat. 803, U. S. C., Title 15, Section 79) (herein called the "Act"). The Commission's order was made under Section 11(b)(2) of the Act. The pertinent provisions of the Act are set forth in the Appendix to the accompanying brief.

Summary Statement of the Case.

Petitioner is a holding company as defined in the Act. Its assets consist primarily of securities of an integrated group of five operating utility companies located in the Gulf South area and referred to herein as the "Southern System".[1] Petitioner owns substantially all the common stock of these five operating companies, except in the case of United Gas Corporation, where petitioner owns a majority of the common stock and the entire issue of more than $88,000,000 of second preferred stock. In addition the petitioner owns a large amount of other securities of these companies (Opinion, Appendix B-3, R., Vol. II, p. 660).

Petitioner is itself a statutory subsidiary of Bond and Share since more than 10% of its voting securities are owned by that company. Bond and Share owns .09% of the $7 Preferred Stock of Electric, 18.5% of the $7 Second Preferred Stock and 57.3% of the common stock (R., Vol. II, p. 544). These securities together total 46.8% of the petitioner's outstanding voting power (R., Vol. II, p. 544).

[1] The five operating companies composing the integrated system of Electric covered by its plan filed December 4, 1941, on which the Commission has failed to hold any hearing, are Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc. and United Gas Corporation and its subsidiaries (R., Vol. II, p. 483 and 499-500).

The Commission found that Bond and Share's ownership of common and preferred stock of Electric was 9.14% of Electric's capitalization of $192,189,868 (R., Vol. II, p. 624 and Opinion Appendix F-1, R., Vol. II, p. 666). In addition, the large cumulative dividends in arrears on petitioner's preferred stock (Opinion, R., Vol. II, p. 544) operate to increase further the interest of petitioner's public security holders. Petitioner's debentures are entirely held by the public and its stock is held by approximately 24,000 public stockholders.

During the course of the proceedings, Electric submitted a voluntary plan which would have brought Electric into conformity with Section 11(b) of the Act (R., Vol. II, pp. 472-520, 532). The Commission has not accorded petitioner any opportunity whatsoever to proceed under this plan or be heard in connection therewith (Opinion, R., Vol. II, pp. 636-647).

The Questions Presented and Specification of Errors.

For the purpose of brevity, the questions presented can be stated as whether or not the Circuit Court of Appeals erred in connection with the assigned errors in the following specification of errors which are intended to be urged:

I. The court erred in affirming the order of the Commission which:

(a) adopted the legally inappropriate remedy of dissolving Electric to remedy the alleged defects in the Bond and Share system;

(b) was based on proceedings not in conformance with the mandatory requirements of Sections 11(a) and (b) of the Act;

(c) was not based on findings of fact necessary to support the Commission's conclusions of undue or unnecessary corporate complexity or unfair or inequitable distribution of voting power;

(d) was arbitrary and unreasonable in choosing among several available remedies the one most severely penalizing the public security holders of Electric and its subsidiaries and the consuming public;

(e) was based on proceedings which do not accord Electric its statutory right to a hearing on its plan of reorganization filed under Section 11(e) of the Act; and

(f) was based on conclusions, assumptions, guesses and speculations as to values of property, arrived at without according petitioner an opportunity to present valuation testimony.

II. The court erred in not considering petitioner's contentions as to the following important questions of federal law on the ground that they were not argued before the Commission:

(a) that Section 11(b)(2) of the Act does not as a matter of statutory interpretation authorize the dissolution of corporations as one of the methods of bringing a holding company system into compliance with the section;

(b) that petitioner is legally incapable of complying with the order of dissolution because dissolution can be effectuated only by a vote of stockholders in pursuance of procedure prescribed by state law;

(c) that the order of the Commission is not in accordance with Section 11(b)(2) of the Act in that it fails to prescribe "steps" which petitioner must take to effectuate compliance with the statutory requirements; and

(d) that the order of the Commission is an effort to deprive petitioner of the benefit of the one-year period granted by Section 11(c) of the Act, within which to comply with orders under Section (b).

III. The Circuit Court of Appeals erred in not holding Section 11(b)(2) of the Act, as construed and applied by the Commission, unconstitutional as:

(a) not based upon or involving a valid regulation of interstate commerce or the exercise of any other federal power;

(b) violating the Tenth Amendment through invading the powers reserved to the states;

(c) a delegation of legislative authority without standards of guidance for administrative action;

(d) violating the due process clause of the Fifth Amendment; and

(e) an *ex post facto* law penalizing Electric and its security holders for acts performed before the statute was passed and legal when done.

Reasons Relied on for Allowance of the Writ.

I.

The Circuit Court of Appeals has decided important questions of federal law which have not been, but should be, settled by this Court.

The constitutionality of Section 11(b)(2) of the Act, its construction and the scope of the Commission's power thereunder are all important questions not yet passed upon

by this Court. Public interest and that of public security holders will be greatly aided by an authoritative decision of these questions. Questions concerning the constitutionality of important federal legislation should be resolved by this Court. An important question is raised as to whether or not the Act authorizes dissolution of companies subject to the Act as a means of ending the "continued existence of any company *in the holding company system.*" Similarly, the Commission's interpretation of Section 11(b)(2) of the Act to allow it an unfettered choice of remedies and not to require consideration by it of a plan submitted as provided in the Act raises questions of far reaching significance which should be settled by this Court.

II.

The Circuit Court of Appeals has decided federal questions in a way probably in conflict with applicable decisions of this Court.

The important constitutional questions, including whether or not Section 11(b)(2) of the Act purports to be or is a valid exercise of the commerce or other federal power and whether or not that section of the Act, as applied, deprives petitioner of property without due process of law, are noted in the petition being filed in this Court by American. In the interest of brevity, petitioner refers to the arguments there advanced for the allowance of the writ.

Among other questions on which the opinion of the Circuit Court of Appeals is in conflict with applicable decisions of this Court is the one raised by petitioner's argument based on *Securities and Exchange Commission* v. *Chenery Corporation,* 318 U. S. 80 (1943). That case requires consideration, which the Circuit Court of Appeals failed to give, of petitioner's argument that the detailed

findings of the Commission are at variance with its ultimate conclusions. Failure to consider this argument opens an easy way to defeat this Court's pronouncement that an administrative order must be judged upon the grounds which the record shows were the bases of the administrative action.

III.

The Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

The Circuit Court of Appeals placed its refusal to consider certain of petitioner's arguments on an asserted lack of power to consider such questions on the ground that they were not raised before the Commission. Various stipulations and statements were brought to the Court's attention to show that the Commission was fully aware of the petitioner's contentions on these questions and to justify the failure actively to urge and argue such points. Since Section 24(a) of the Act charges the court with the duty to consider whether there were reasonable grounds for failure to raise issues before the Commission, the Circuit Court of Appeals departed from usual judicial proceedings in its failure to give any consideration to whether or not such stipulations and statements constituted reasonable grounds for failing to urge and argue the particular points.

IV.

The Circuit Court of Appeals has sanctioned such a departure by the Commission from the accepted and usual course of administrative proceedings as to call for an exercise of this Court's power of supervision.

The Commission's departure from the accepted and usual course of administrative proceedings arose in connection with its arbitrary choice of remedy and its failure to accord petitioner its statutory right to a hearing on its plan of reorganization.

V.

The decision below adopted an erroneous interpretation of the Act and should be reviewed in order that the Act be interpreted and enforced as intended by Congress.

Erroneous interpretations of the Act involve the power of the Commission to order dissolution, the unfettered choice of remedy accorded the Commission by the court, and the denial of petitioner's statutory right to a hearing on its plan. In addition, the interpretation of Section 11(b)(2) of the Act that allowed consideration of value in connection with the issues of corporate complexity and distribution of voting power, yet deprives petitioner of an opportunity of introducing valuation testimony, is such a paradoxical error that this Court should not allow it to continue in connection with so important a statute as this Act. Instead of correcting this interpretation the Circuit Court of Appeals indulged in a presumption (R., Vol. IV, p. 888; 141 F. (2d) at 619) that such an "egregious blunder" could not have been committed.

VI.

The Circuit Court of Appeals erred in its decree.

WHEREFORE, for the reasons stated above and discussed more fully in the annexed brief, your petitioner prays that a writ of certiorari be issued out of and under the seal of this honorable Court, directed to the United States Circuit Court of Appeals for the First Circuit, to the end that the above cause may be certified to and reviewed and determined by this Court and that the judgment of said Circuit Court of Appeals in the above-entitled cause may be reviewed by this Court, and your petitioner prays for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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Counsel for Petitioner.

June 16, 1944.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. ———

ELECTRIC POWER & LIGHT CORPORATION,
Petitioner,

against

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

[For index, table of cases, reference to opinions below, jurisdictional statement, statement of the case and specification of errors, we refer to the petition.]

ARGUMENT.

I.

The action by the Circuit Court of Appeals on procedural objections to the order involves important federal questions, a conflict with decisions of this Court, a departure from accepted and usual judicial and administrative procedure, and an erroneous interpretation of the Act.

Section 11(b)(2) of the Act provides that the Commission shall specify the "steps" to be taken in order to ensure

that the "continued existence of any company *in the holding-company system* does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system." It does not provide for elimination or dissolution of companies as such.

The present proceedings were instituted by a "Notice and Order" for hearing issued by the Commission on May 10, 1940, which brought into question the structure of the Bond and Share holding-company system, charging that it was unduly complicated and resulted in unfair and inequitable distribution of voting power among security holders of that system (R., Vol. I, pp. 27-54). By subsequent order, dated June 7, 1940, (R., Vol. I, pp. 65-66) the issue was confined to the single question of whether it is necessary to discontinue the existence of Electric (or American) to remedy these defects in the Bond and Share system.

The remedy adopted of ending corporate existence of a company which is not the one controlling the system to which the proceeding related is a "death sentence" imposed on the wrong party. It is axiomatic that to punish one corporation, owned largely by public security holders, for the sins of another not controlled by it, in a proceeding directed entirely against the holding-company structure of such other corporation, has no foundation in law or justice.

Elimination of Electric's existence in the Bond and Share holding-company system could, of course, be accomplished without injury to innocent public security holders of Electric by simply ordering Electric's divestment from the Bond and Share system.

A point of primary importance to Electric, its public security holders and other holding companies and their

investors arises from the absence of any provision in the Act giving the Commission power to order corporate dissolution. Literally billions of dollars are involved in this question relating to the Commission's power to order dissolution. That Congress intended to give the Commission no such power can be seen from the fact that language directed to the abolition of holding companies and ordering them to "reorganize or dissolve" was struck from the bill (original draft of Wheeler-Rayburn bill, 74th Cong., 1st Sess., S. 1725, Sections 2(c) and 11 and H. R. 5423, Sections 1(c) and 10; the House struck similar provisions from Section 11(b)(2) of S. 2796, 74th Cong., 1st Sess., the bill which became law). The Commission cannot do by construction what Congress declined to do by enactment.

Pennsylvania Railroad Company v. *International Coal Mining Company*, 230 U. S. 184, 198 (1913);

Carey v. *Donohue, Trustee in Bankruptcy of Humphreys*, 240 U. S. 430, 437 (1916).

The Commission's lack of power to order dissolution was one of four questions not passed upon by the Circuit Court of Appeals. Other arguments which the court declined to consider were: (1) that dissolution could only be effectuated by stockholders pursuant to state law; (2) that the order failed to meet the statutory requirement that it prescribe "steps" to effectuate compliance with the Act; and (3) that by ordering dissolution at a time when other matters were pending before the Commission which required hearings and determination by the Commission before dissolution could be effected (Opinion, R., Vol. II, pp. 648-649), the Commission deprived Electric of the one-year period granted by Section 11(c) within which to com-

ply with the order. The court specifically placed its failure to consider such questions on an asserted lack of power to consider them, due to the fact that they were not raised before the Commission. Petitioner contends that these questions were raised and brought to the attention of the Commission. This is not the place to argue this in full. However, the stipulation reserving the right to raise all legal issues (R., Vol. II, pp. 522 and 528) which the Circuit Court of Appeals viewed as not constituting a "waiver," (R., Vol. IV, p. 876; 141 F. (2d) at 616) should have been viewed in the light of Section 24(a) of the Act allowing the court to review issues not raised before the Commission where there "were reasonable grounds for failure so to do." The court's assertion of a total lack of power to consider such issues was thus unwarranted. The importance of a determination of such issues which cut to the heart of the application of the Act need not be labored.

The Commission departed from the accepted and usual course of administrative proceedings in failing to accord petitioner a hearing on its Section 11(e) plan. The Commission thus ignored both the scheme and the mandate of the Act. The scheme of the Act for achieving its main objectives of geographical integration and simplification of corporate structure by voluntary action is apparent from any examination of the Act. Section 11(e) of the Act provides that a holding company may at any time submit a plan and requires that the Commission "after notice and opportunity for hearing * * * *shall* make an order." The plan proposed by Electric (R., Vol. II, pp. 487-518) provided for integration through coordinated control of Electric's interconnected Southern System. It provided for corporate simplification through the issuance of a single class of voting stock.

The Commission's statement that it would "supervise all details of the effectuation of the order" (Opinion, R., Vol. II, p. 648) indicates the Commission's intent that what is in effect an involuntary reorganization may be forced on your petitioner without any consideration or opportunity for hearing on its proposed plan.

II.

The Commission's decision was based upon conclusions unsupported by findings of fact. Its affirmance was, therefore, contrary to decisions of this Court and not in accordance with accepted and usual standards applicable to administrative proceedings.

This Court held in *Securities and Exchange Commission* v. *Chenery Corporation*, 318 U. S. 80 (1943), that administrative orders must be judged upon the grounds on which the administrative body purported to act. The Circuit Court of Appeals failed to apply this test and dealt only with whether or not the ultimate conclusions *could* be supported by the record. *Actually* the Commission placed its conclusions as to unfair and inequitable distribution of voting power on particular findings made by it. This is shown by the statement that its conclusion was arrived at "on the basis of the foregoing figures" (Opinion, R., Vol. II, p. 624). The Commission compared Electric's investments in its subsidiaries with the total capitalization of such subsidiaries (Opinion, R., Vol. II, p. 622).[2] The Commission's own figures left Electric with 39.21% of the total capital-

[2] Petitioner contended that it was fallacious to include bonds and other debts of operating subsidiaries in a comparison made for the purpose of judging distribution of voting power. Excluding such securities, which ordinarily carry no vote, Electric has 65.02% of the equity.

ization (Opinion, R., Vol. II, p. 622). The Commission adjusted this figure to a lower one by assumed deductions for "write-ups" and inadequate depreciation reserves (Opinion, R., Vol. II, pp. 622-623). Since these assumptions were qualified so as not to be fact findings, the 39.21% remains as the fact finding against which to test the ultimate conclusion of unfair and inequitable distribution of voting power. It is manifest that, as a matter of law, voting control by the owner of practically 40% of the total investment, even including debt, is not unfair or inequitable.

Furthermore, the Commission's reasoning is entirely unsupportable in that it draws overall conclusions based on an algebraic addition of alleged plus and minus investments in various subsidiaries, holding in effect that since Electric's common stocks in one subsidiary are "under water," the amount of the deficiency should be deducted from its investment in other subsidiaries. For example, no one has questioned that Electric has an actual investment in the order of $90,000,000 in United Gas Corporation representing substantially complete ownership of this very large equity. Surely there can be no reason why Electric should be required to divest itself of that equity because it is said to have a minus investment in another company such as Utah Power & Light Company.

Space does not permit presentation here of a similar demonstration with reference to the ultimate conclusion in regard to undue and unnecessary corporate complexity. It is sufficient to note that this conclusion was based primarily on the same figures and comparisons used by the Commission as the basis for its conclusion as to voting power (Opinion, R., Vol. II, pp. 624-625). It thus follows that here again the facts found fail to support the ultimate conclusion and thus affirmance of such conclusion based upon

the grounds assigned by the Commission is in conflict with the decision of this Court in the *Chenery* case.

Many of the Commission's rulings, particularly those as to the distribution of voting power, were made upon assumptions, guesses and speculations as to value. Without proper findings as to value, there is nothing to support the opinion. The opinion shows (Opinion, Appendix F-1, Col. 2, R., Vol. II, p. 666) the underlying book value of Electric's investments in its subsidiaries to be over $256,000,000 and Bond and Share's direct investments in such subsidiaries to be over $58,000,000. This total of more than $314,000,000 represents 48% of the total capitalization of these operating subsidiaries. Any finding at variance with these book values is unwarranted since the Commission refused to consider valuation evidence (R., Vol. I, pp. 234-262). For further discussion of the errors involved in excluding valuation evidence, see American's brief, Point II(b).

III.

The affirmance of the Commission's arbitrary choice of remedy was contrary to applicable decisions of this Court and was an approval of administrative action not in accordance with accepted and usual administrative procedure.

A further and fundamental vice in the Commission's order was the choice of the drastic remedy of dissolution. Where there is a choice of remedies and where the rights of innocent third persons, including the investing and consuming public, will be affected by the application of the remedy selected, that remedy should be chosen which will do least injury to public interests and yet give effect to the

statutory mandate. Moreover, where there is in addition a selection to be made as to the persons against whom the penalty of the remedy will operate, the penalty should be imposed on the "real wrong-doers." In such a situation, which is the one here presented, the selection of a remedy which penalized innocent third persons and the investing and consuming public was arbitrary, unreasonable and in conflict with decisions of this Court.

Standard Oil Co. v. *United States,* 221 U. S. 1, 78, 81 (1911);
United States v. *American Tobacco Co.,* 221 U. S. 106, 184-5, 187-8 (1911);
United States v. *United States Steel Corporation,* 251 U. S. 417, 457 (1920).

The Commission should have followed this settled judicial approach in considering other available remedies before entering the drastic dissolution order against Electric. Just as in the *American Tobacco* case, this Court directed that, before the lower court should consider more drastic action, hearings should be held on methods to end the combination and create a condition in harmony with the law, so in this case such hearings on methods to bring about simplification should have been held. By parity of reasoning (and assuming the validity of the statute, the authority of the Commission to order dissolution, and the existence of voting inequities and complexity of structure), the drastic remedy of dissolution was available to the Commission only if neither the Commission by order, nor the parties by agreed plan, could reach a result simplifying structure and eliminating voting inequities.

The Commission's only justification for its wide departure from the accepted and usual course of proceedings is

that, while it admitted that other remedies were available, the present order was capable of prompt execution and avoided further hearings and administrative difficulties (Opinion, R., Vol. II, pp. 636, 640, 646-647). However, this Court has held that "the advantages of a simple rule must be balanced against the importance of taking fair account, in a civilized legal system, of every socially desirable factor in the final judgment." *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177, 198 (1941). The above authorities sufficiently answer this argument of convenience, as well as the Commission's argument (Opinion, R., Vol. II, pp. 638-639) that dissolution was *necessary* because in the Commission's opinion it was an *available* remedy.

IV.

The constitutionality of Section 11(b)(2) of the Act as construed and applied by the Commission is a question of federal law of utmost importance which has not been, but should be, settled by this Court.

This Court by granting writs of certiorari in *North American Company* v. *Securities and Exchange Commission,* 318 U. S. 750 (1943), *Engineers Public Service Co.* v. *Securities and Exchange Commission,* October Term, 1943, No. 635 (June 5, 1944) and *Otis & Co.* v. *Securities and Exchange Commission,* October Term, 1943, No. 993 (June 12, 1944), has already indicated its desire to review the constitutionality of parts of Section 11 of the Act and the validity of action taken by the Commission under this important section. Determination of the constitutional questions here involved is of no less importance. Of the sixteen largest holding-company systems registered under the Act, having

total assets of $14,729,000,000, nearly all are involved in proceedings relating to Section 11(b)(2) (SEC Annual Report for 1943, pp. 25-38).[3] The need for an authoritative decision by this Court with reference to the constitutionality of this major legislation affecting such vast assets is of vital interest both to investors and the consuming public.

If this section of the Act is overthrown or its application limited, such result should be brought about before intervening rights accrue making it impossible to restore corporate *status quo*. On the other hand, the upholding of Section 11(b)(2) by this Court would undoubtedly expedite other proceedings pending before the Commission and the courts.

The particular constitutional issues raised by the present petition, involving the scope of federal power, delegation of legislative authority and violations of the due process clause, are argued in the brief being filed by American. The constitutional principles presented therein apply equally to Electric. In the interest of brevity, Electric adopts in support of its position on the constitutional issues the statements and arguments contained in American's petition and brief.

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[3] The major holding-company systems listed in the Commission's report as involved in proceedings relating to Section 11(b)(2) are the systems of: Electric Bond and Share Company, The North American Company, The Commonwealth & Southern Corporation, Cities Service Company, Associated Gas and Electric Company, Standard Power and Light Corporation and Standard Gas and Electric Company, Columbia Gas & Electric Corporation, Niagara Hudson Power Corporation, International Hydro-Electric System, The Middle West Corporation, The United Light and Power Company, American Water Works and Electric Company, Inc., Northern States Power Company and The United Corporation.

Conclusion.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioner.

APPENDIX

Excerpts from Public Utility Holding Company Act of 1935 (49 Stat. 803, U. S. C., Title 15, Section 79):

"Section 11. ***Simplification of holding company systems—***

"(a) ***Examination by Commission with view to simplification.***

"It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

"(b) ***Limitations on operations of holding company systems.***

"It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

* * *

"(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute

voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company.

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"The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in Section 24 of this chapter.

"(c) ***Time for compliance with order limiting operations.***

"Any order under subsection (b) shall be complied with within one year from the date of such order; but the Commission shall, upon a showing (made before or after the entry of such order) that the applicant has been or will be unable in the exercise of due diligence to comply with such order within such time, extend such time for an additional period not exceeding one year if it finds such extension necessary or appropriate in the public interest or for the protection of investors or consumers.

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"(e) ***Submission by company of plan for simplification; court enforcement of order of approval; appointment of trustee.***

"In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered hold-

ing company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan.

* * *

"Section 24. *Court Review of Orders.*

"(a) Any person or party aggrieved by an order issued by the Commission under this chapter may obtain a review of such order in the circuit court of appeals of the United States * * *. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. * * *"